UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,008	01/04/2002	Mark Linus Bauman	ROC920010193US2	6602

7590 08/09/2006	EXAMINER
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ART UNIT	PAPER NUMBER
2143	

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DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/038,008	BAUMAN ET AL.
	Examiner	Art Unit	
	Joseph E. Avellino	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _06 July 2006_.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-3,5-7,9-12,14,15,17-23,25,26,28 and 29_ is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-3,5-7,9-12,14,15,17-23,25,26,28 and 29_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
   application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   Claims 1-3, 5-7, 9-12, 14, 15, 17-23, 25, 26, 28 and 29 are pending in this

examination; claims 1, 9, and 20 independent.

Double Patenting

2.   The nonstatutory double patenting rejection is based on a judicially created
doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the
unjustified or improper timewise extension of the "right to exclude" granted by a patent
and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11
F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225
USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA
1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington,*
418 F.2d 528, 163 USPQ 644 (CCPA 1969).
        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be
used to overcome an actual or provisional rejection based on a nonstatutory double
patenting ground provided the conflicting application or patent is shown to be commonly
owned with this application. See 37 CFR 1.130(b).
        Effective January 1, 1994, a registered attorney or agent of record may sign a
terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with
37 CFR 3.73(b).

3.   Claims 1-34 of application no. 10/037,595 contains every element of claims 1-30

and as such anticipates claims 1-3,5-7,9-12,14,15,17-23,25,26,28 and 29 of the instant

application.

4.   "A later patent claim is not patentably distinct from an earlier patent claim if the

later claim is obvious over, or **anticipated by,** the earlier claim. In re Longi, 759 F.2d at

896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting

because the claims at issue were obvious over claims in four prior art patents); In re

Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of

obviousness-type double patenting where a patent application claim to a genus is

anticipated by a patent claim to a species within that genus)." ELI LILLY AND

COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the

Federal Court, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

Claims 1-7, 9-11, 14-15, 17-18, 20-22, 25, 26, and 28-29 are rejected under 35

U.S.C. 103(a) as being unpatentable over Nair (US 2003/0217184) in view of Beighe

(USPN 6,055,576) in view of Putcha et al. (USPN 6,822,966) (Hereinafter Putcha).

5.   Referring to claim 1, Nair discloses a method of processing messages,

comprising:

        receiving at a driver configured for a server application executing on a computer

data from a remote source via a network connection prior to allocating a buffer to

contain the data (p. 3, ¶ 23); and subsequently

        allocating the buffer to contain the data (p. 3, ¶ 25).

        Nair does not specifically state using a networked based socket receiving data

and then allocating the buffer to contain the data. However Beighe teaches that TCP is

a well known protocol that implements networked based sockets in order to allow a

server application to communication with a client application (col. 2, lines 46-62) as well as a socket receiving data and then stored in a buffer. In analogous art, Beighe teaches receiving data at a socket and then allocating the buffer (col. 3, lines 42-55). It would have been obvious to one of ordinary skill in the art to combine the teaching of Beighe with Nair in order to provide intelligent packet processing to the system of Nair as supported by Beighe (col. 3, line 58 to col. 4, line 5).

6.   Nair in view of Beighe do not specifically disclose determining a buffer acquisition mode according to a buffer mode parameter with a receive operation call. In analogous art, Putcha discloses another method of processing messages which teaches a buffer mode parameter which indicates a buffer acquisition method for acquiring a buffer (col. 4, lines 18-33). It would have been obvious to one of ordinary skill in the art to combine the teaching of Putcha with Nair and Beighe in order to provide an efficient method to allocate buffers for data transmission as supported by Putcha (col. 4, lines 5-10). Nair-Beighe-Putcha do not specifically disclose that the buffer is sized exactly to the size of the data received from the remote source, however it is well known that memory requests can include a size of memory which is needed to store the data. By this rationale, "Official Notice" is taken that both the concept and advantages of providing for specifying a size of the data in the buffer request is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Nair to include specifying a size of the data in the buffer request since Nair discloses that the buffer manager identifies a buffer of appropriate size, however does not disclose how it knows this information. This would lead one of ordinary skill in the art to

search for methods as to how to request data buffers, eventually finding the well known

method of requesting a specific sized data buffer.

7.   Referring to claim 2, Nair discloses the messages are client-server messages (it

is inherent that the messages are client server messages since any sender is

considered a server and any recipient is considered a client).

8.   Referring to claim 3, Nair discloses the data is received over a sockets streaming

protocol (i.e. receiving packets continuously) (p. 3, ¶ 23).

9.   Referring to claim 4, Nair discloses allocating the buffer comprises sizing the

buffer according to a size of the data (i.e. identifies a buffer of appropriate size in which

to store the frame of data) (p. 3, ¶ 25).

10.   Referring to claim 5, Nair discloses the allocating is performed in response to a

buffer request from the sockets layer (p. 3, ¶ 25).

11.   Referring to claim 6, Nair discloses the network connection is a TCP/IP

connection (i.e. Ethernet port) (p. 3, ¶ 23).

12.   Referring to claim 7, Beighe discloses processing a buffer request from a sockets

layer after receiving the data (col. 3, lines 40-60); and

providing the buffer to the sockets layer (col. 3, lines 40-60).

13.   Claims 9-11, 14-15, 17-18, 20-22, 25, 26, and 28-29 are rejected for similar

reasons as stated above.   Furthermore Nair discloses the allocation is performed by

the sockets layer (p. 3, ¶ 25), and calling back to the sockets server application with an

instruction to allocate the buffer (p. 3, ¶ 23-25). Beighe further discloses the buffer is

allocated from storage owned by the sockets server application based on a value of the

buffer mode parameter (i.e. direction) (col. 3, lines 10-50),

       Claims 12 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Nair in view of Beighe in view of Glasser et al. (USPN 5,764,890) (hereinafter

Glasser).

14.   Referring to claim 12, Nair in view of Beighe discloses the invention substantively

as described in claim 9. Nair in view of Beighe does not specifically state that the input

operation is configured with a record definition specifying a data format of the data. In

analogous art, Glasser discloses another method of processing messages wherein the

input operation is configured with a record definition specifying a data format of the data

(col. 12, line 60 to col. 13, line 9). It would be obvious to a person of ordinary skill in the

art at the time the invention was made to combine the teaching of Glasser with Nair and

Beighe since Nair discloses the packet is received and a buffer of appropriate size is

identified (p. 3, ¶ 25), however does not specify what size the Ethernet packet is. This

would lead to one of ordinary skill in the art to determine negotiation handshaking

methods thereby finding Glasser and it's efficient method of negotiating the maximum

size of data packets (col. 12, lines 60-65).

15.   Claim 23 is rejected for similar reasons as stated above.

16.   Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nair in

view of Beighe in view of Fry et al. (USPN 4,467,411) (hereinafter Fry).

17.   Referring to claim 19, Nair in view of Beighe discloses the invention substantively

as described in claim 9. Nair furthermore discloses receiving the data via the network

connection and copying the data into a previously allocated buffer (i.e. protocol software

module receiving a frame of data) provided to the sockets layer with the input operation

(p. 3, ¶ 23). Nair in view of Beighe does not disclose if the previously allocated buffer is

not large enough to contain the data, requesting a large buffer sufficient to contain the

data. Fry discloses another message processing system which if the previously

allocated buffer is not large enough to contain the data, requesting a large buffer

sufficient to contain the data (col. 22, lines 42-47). It would be obvious to a person of

ordinary skill in the art at the time the invention was made to combine the teaching of

Fry with Nair and Beighe in order to provide improved asynchronous signal transfers

between a buffer and a plurality of signal handling devices by allowing scheduling of

signal-handling device operations with respect to a managed buffer as supported by Fry (col. 3, lines 19-29).

Response to Arguments

18.   Applicant's arguments dated July 6, 2006 have been fully considered but are not persuasive.

19.   In the remarks, Applicant argues, in substance, that (1) Nair does not disclose receiving at a socket, data from a remote source prior to allocating a buffer to contain the data, rather nair is directed to a method for processing data frames up a communications protocol stack, (2) Putcha does not disclose a method for determining a mode to obtain the buffer according to a buffer mode parameter supplied with a receive operation call.

20.   As to point (1) Applicant is, one again, misconstruing the teachings of Nair. Although Applicant's cited passages of the reference are correct, they do not have any bearing as to how Nair teaches the claimed limitations. Applicants must see that "as an initial step, a driver or physical layer protocol software module [read server software application] receives a frame of data" (p. 3, ¶ 23). **Then** "the driver processes the data frame" (p. 3, ¶ 23). The allocation of the buffer occurs *after* the frame is received. This must occur since the driver will have no way of knowing the actual size of the packet

until after it is received ("the buffer manager identifies a buffer of appropriate size in which to store the frame of data") (p. 3, ¶ 25). Furthermore "the buffer is returned to the linked list---for temporarily storing subsequent data frames *received at* or to be transmitted by the machine" (p. 3, ¶ 28). This clearly shows that the buffer is allocated *after* the packet is received by the server. By this rationale, the rejection is maintained.

21. As to point (2) Applicant has not sufficiently defined what is meant by a "buffer mode parameter" in the claim and is therefore open to interpretation. By this rationale, Putcha does, in fact, disclose a "buffer mode parameter" which could be construed as the priority value for the sub pool of Putcha. By this rationale, the rejection is maintained.

Conclusion

Again, it is the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in manner, which distinguishes over the prior art. As it is Applicant's right to continue to claim as broadly as possible their invention. It is also the Examiner's right to continue to interpret the claim language as broadly as possible. It is the Examiner's position that the detailed functionality that allows for Applicant's invention to overcome the prior art used in the rejection, fails to differentiate in detail how these features are unique. As it is extremely well known in the networking art as already shown by Nair and other prior arts of records disclosed, for a method of processing messages as well

as other claimed features of Applicant's invention. Thus, it is clear that Applicant must

submit amendments to the claims in order to distinguish over the prior art use in the

rejection that discloses different features of Applicant's claim invention.

22.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

23.   Applicant has failed to seasonably challenge the Examiner's assertions of well

known subject matter in the previous Office action(s) pursuant to the requirements set

forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for

evidence set forth by Applicant in the next response. Accordingly, the claim limitations

the Examiner considered as "well known" in the first Office action are now established

as admitted prior art of record for the course of the prosecution. See In re Chevenard,

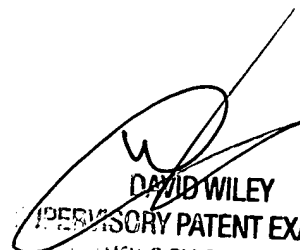139 F.2d 71, 60 USPQ 239 (CCPA 1943).

24.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

        Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

        Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JEA
July 19, 2006

DAVID WILEY
SUPERVISORY PATENT EXAMINER
ART UNIT 2100